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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/964,785

09/26/2001

Gary K. Loda

SUREB-58450

3304

39607

7590

07/25/2006

EXAMINER

JASTRZAB, KRISANNE MARIE

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SAN DIEGO, CA 92101

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,785

Applicant(s)

LODA ET AL.

Examiner

Krisanne Jastrzab

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34,35,47,48 and 51-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34,35,47,48 and 55-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/5/2006 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 34-35, 47-48 and 51-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kotler et al., U.S. patent No. 6,504,898 B1 in view of Bergeret et al., U.S. patent No. 4,852,138 and Allen et al., U.S. patent No. 6,492,645.

Kotler et al., clearly teach a method and apparatus for optimizing the irradiation of products wherein maximum and minimum dose rates are determined for the given geometry, such as thickness, of the product to be treated and the intensity of the radiation applied is modified such that the entire product receives the optimal amount of radiation consistently. The modification of the radiation is achieved by means adjustably modulating the shape of the radiation generated by moving plates into and out of the path of radiation during the radiation process. See column 1, lines 20-25, column 3, lines 10-15, column 4, lines 1-15 and 40-50, column 6, line 45, column 7, lines 25-35 and lines 65-68, column 8, lines 1-47, column 9, lines 25-60, and column 12, lines 60-68.

Bergeret et al., teach a method and apparatus for optimizing the irradiation of products to control the max/min radiation dose received which includes the teaching that irradiation can be performed in any known manner, either a cylindrical source with the products being rotated such that all sides are irradiated, or a two source

configuration where the products are passed there between such that opposite sides are controllably irradiated. Bergeret et al., further teach that a larger number of products can be processed with a two source panel system, then a cylindrical system because the total quantity of products that can be irradiated simultaneously is larger. See column 2, lines 56-68, column 3, lines 1-23 and lines 65-68, column 4, lines 1-16, column 5, lines 32-38 and claim 2.

Allen et al., clearly teach a method and apparatus for the irradiation of articles wherein a conveyor system is provided having two converging conveyors moving at different speeds and having a gap therebetween with radiation sources provided on both sides thereof to irradiate products carried by the conveyors. Allen et al., further teaches the desire to maintain a uniform dose rate throughout the articles being sterilized. See column 5, lines 50-68, column 6, lines 33-50 column 8, lines 7-15 and column 9, lines 40-all of column 10.

It would have been well within the purview of one of ordinary skill in the art to substitute plural sources for irradiation and the conveyed system, as taught in Bergeret et al. and Allen et al., in the system of Kotler et al., because it would allow for the simultaneous treatment of a larger number of products, including those with non-uniform geometries, while maintaining the dose control functions with adjustable radiation.

Response to Arguments

Applicant argues that Kotler teaches away from the use of a conveyed system with multiple radiation sources at column 2 and 3, however, the Examiner would

disagree and maintain that Kotler teaches the preferred use of the single source and rotating article, but does not teach that a conveyed system with multiple sources would not function with adjustable radiation, and both Bergeret et al., and Allen et al., teach clear benefits to such systems with Allen et al., particularly focused on the provision of a uniform dose rate, thus properly motivating the combination set forth above.

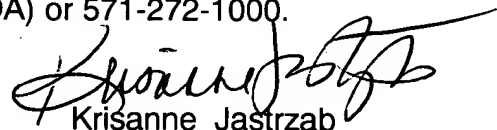
Applicant further argues that Kotler et al., fail to teach or suggest the movement of a radiation reducing member into and out of the path of radiation based on dose rate determination, however, the Examiner would disagree and point out that Kotler et al., clearly teach that the adjustable collimator includes 2 plates moved into and out of the path of radiation based on the dose rate measurements while the radiation process is occurring. See column 7, line 65 through column 8, line 25, with particular attention to lines 20-25 of column 8.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Thurs. 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Krisanne Jastrzab
Primary Examiner
Art Unit 1744

July 21, 2006